



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0140]

#### Entry-Level Driver Training: Application for Exemption; Oak Harbor Freight Lines, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant an exemption from the qualification requirements pertaining to entry-level driver training (ELDT) theory instructors for Oak Harbor's safety supervisor, Mr. Jeff McLaughlin. The exemption will allow Mr. McLaughlin to conduct classroom (theory) training for entry-level drivers who intend to operate commercial motor vehicles (CMV) used in the transportation of hazardous materials (HM). The exemption excuses Mr. McLaughlin from the requirement to either possess a commercial driver's license (CDL) or have previously held a CDL. The road portion of the training will be completed by behind-the-wheel (BTW) instructors that meet the ELDT qualification requirements. FMCSA concluded that granting the exemption is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** The exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires May 19, 2027.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](https://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is

there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202-366-2722); [MCPSPD@dot.gov](mailto:MCPSPD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### **Viewing Comments and Documents**

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2021-0140” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, “FMCSA-2021-0140” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must

publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)).

The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

#### ***Current Regulatory Requirements***

The Agency's ELDT regulations, set forth in 49 CFR part 380, subparts F and G, establish theory and BTW training requirements for individuals seeking to obtain a Class A or Class B CDL or a passenger (P), school bus (S), or hazardous materials (H) endorsement for the first time. The regulations take effect on February 7, 2022. The regulations require that ELDT be conducted only by qualified training providers and training instructors; drivers must obtain ELDT from a training provider listed on FMCSA's Training Provider Registry.

As set forth in the definition of "theory instructor" in 49 CFR 380.605, theory instructors must meet one of these qualifications: (1) the instructor holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least 2 years of experience driving a CMV

requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable State qualification requirements for CMV instructors; or (2) the instructor holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, and has at least 2 years of experience as a BTW CMV instructor and meets all applicable State qualification requirements for CMV instructors. The definition of “theory instructor” in 49 CFR 380.605 includes an exception from the requirement that the instructor currently hold a CDL and relevant endorsements, if the instructor previously held a CDL of the same or higher class and complies with the other requirements set forth in the definition.

Unlike the P and S endorsement training curricula, which include both theory and BTW portions, the required H endorsement training is theory only. The H endorsement theory curriculum, set forth in 49 CFR part 380, Appendix E, applies to driver-trainees who intend to use CMVs to transport hazardous materials as defined in 49 CFR 383.5.

Because applicants are not required to take an HM-specific skills test to obtain the H endorsement, the ELDT regulations do not contain a BTW curriculum requirement applicable to that endorsement. There are, however, BTW ELDT requirements for applicants seeking a Class A or Class B CDL or a P or S endorsement.

### ***Applicant’s Request***

On behalf of its Pacific Northwest Safety Supervisor, Mr. Jeff McLaughlin, Oak Harbor seeks an exemption, from the ELDT theory instructor qualifications set forth in the definition of the term “theory instructor” in 49 CFR 380.605, as identified above. Oak Harbor requests the exemption so that Mr. McLaughlin will be able to provide ELDT theory instruction pertaining to the transportation of HM by CMV. Oak Harbor cites Mr. McLaughlin’s extensive teaching experience and subject matter expertise as the basis for its exemption request. Oak Harbor further states that the road portion of the training

would be completed by BTW instructors that meet the ELDT requirements. A copy of the exemption application is in the docket referenced at the beginning of this notice.<sup>1</sup>

#### **IV. Equivalent Level of Safety**

Oak Harbor states that Mr. McLaughlin's experience and expertise in the HM field would supersede HM training offered by other theory and BTW training instructors and would enhance their HM materials and safety program. Oak Harbor provided the following list of Mr. McLaughlin's credentials:

- Over 20 years' experience as a certified truck inspector holding certifications in CVSA Part A and B, Hazardous Materials, Tank and other bulk packagings, Motor Coach and Multi Surface HM Transportation.
- 18 years' experience as a NTC Basic HM instructor
- Previous Region IV Cooperative Hazardous Materials Enforcement Development (COHMED) Program Vice Chairman
- Current COHMED Industry Liaison
- Former Training Lieutenant, Supervisory Lieutenant and District Captain in charge of CVSA and Hazardous Materials training and recertification programs for the Montana Motor Carrier Services
- Certified civilian CVSA Hazardous Materials Instructor
- Former Sergeant, Lieutenant and Captain overseeing CMV inspectors at the Montana/Alberta Joint Use Vehicle Inspection Station Coutts, AB regulating enforcement of FMCSA and Transport Canada regulations pertaining to vehicle safety and hazardous material/dangerous goods regulations

#### **V. Public Comments**

On September 8, 2021, FMCSA published notice of this application and requested public comment (86 FR 50426). The Agency received four comments. Two respondents, Railsback HazMat Safety Professionals, LLC (Railsback) and the Washington Trucking Associations (WTA) submitted comments favoring the exemption application. The other two respondents, J. Walker and an anonymous commenter, opposed or questioned the exemption application, respectively.

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<sup>1</sup> The Agency notes that Oak Harbor's written application requests an exemption from the specific requirement that theory instructors hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided. On August 30, 2021, in a conversation with Oak Harbor's Safety Manager, Mr. Tom Mueller, FMCSA personnel confirmed that Oak Harbor is seeking exemption from all the theory instructor qualification requirements set forth in the definition of "theory instructor" in 49 CFR 380.605. A summary of that conversation can be found in the docket for this notice.

J. Walker stated the following: “Oak Harbor Freight Lines should not be granted this exemption as the reason for so many accidents on the roads today is Large Carriers get exemptions on training drivers and the majority of new drivers on the road have no clue what they are doing. Two weeks of classroom training and they are turned loose on the highways with no clue about regulations or even how to drive a truck.”

An anonymous commenter said that it would be unwise for the FMCSA leadership to grant the exemption “without conducting a comprehensive evaluation of the credentials and competencies possessed by Oak Harbor's safety supervisor Jeff McLaughlin.” The commenter further stated: “Having worked in a factory that was both a producer and a consumer of hazardous waste, I question how an individual acting as a safety supervisor could possess the competencies needed to train transportation workers how to safely engage in the commercial transportation of hazardous materials. Reflecting on my past experience, the rules and regulations pertaining to issues of this nature were constantly changing.”

Railsback submitted the following comment in favor of the exemption: “Without a doubt, I believe that former FMCSA, NTC Associate Staff Instructors have a better understanding of the ELDT Theory requirements, than 50-75% of driver/trainers, with CDLs. Not only do former Associate Staff Instructors know the regulations, but also the application of said regulations to real life roadside situations. Additionally, former Associate Staff Instructors experience goes beyond that of a driver/trainer, who has only worked/trained in one or two particular areas of the motor carrier industry.”

WTA stated that it “believes Mr. McLaughlin’s credentials and significant hazardous materials experience should exceed FMCSA’s threshold to maintain the current level of safety. Additionally, due to the current driver shortage and the nationwide labor shortage, denial of the exemption application would likely prevent Oak Harbor from implementing a more efficient and effective hazardous materials endorsement

training program to support the company's operations. For those reasons, WTA strongly supports Oak Harbor's exemption application."

## **VI. FMCSA Response to Comments and Decision**

FMCSA has evaluated Oak Harbor's application for exemption and the public comments. The Agency conducted a comprehensive review of Oak Harbor's safety performance, which included a review of the Motor Carrier Management Information System safety records, and inspection and accident reports submitted to FMCSA by State agencies. Oak Harbor has an active USDOT registration, minimum levels of insurance as required by 49 CFR part 387 and is not subject to any imminent hazard or other out-of-service orders. FMCSA independently verified Mr. McLaughlin's professional credentials identified in the exemption application, as suggested by the anonymous respondent. While J. Walker opposed the application, they did not specifically challenge any of Mr. McLaughlin's credentials or HM training experience, focusing instead on the ability of newly trained drivers to safely operate a CMV. As Oak Harbor stated in its application, their entry level drivers will receive the required BTW training from instructors fully meeting the qualification requirements set forth in definition of "BTW instructor" in 49 CFR 380.605. Therefore, based on Mr. McLaughlin's extensive experience as both an HM instructor and inspector, and his stellar reputation in the HM training community, FMCSA has decided to grant the exemption. FMCSA believes that the exemption will likely achieve a level of safety that is equivalent to or greater than the level that will be achieved absent such exemption, in accordance with § 381.305(a).

### ***Extent of the Exemption***

This exemption is granted to Oak Harbor on behalf of their instructor Mr. Jeff McLaughlin. The exemption from the qualification requirements set forth in the definition of "theory instructor" in 49 CFR 380.605 will allow Mr. McLaughlin to

provide ELDT theory instruction for the H endorsement curriculum in Appendix E of Part 380 without meeting these requirements. The exemption is effective [Insert date of publication in the FEDERAL REGISTER] and expires May 19, 2027.

**Robin Hutcheson,**  
*Deputy Administrator.*

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